

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2203.

762

No. 9, SPECIAL CALENDAR.

ISABEL I. WALL, BY HER NEXT FRIEND, STEPHEN R.
WALL, APPELLANT,

vs.

JAMES F. OYSTER, WILLIAM V. COX, BARTON W. EVER-
MANN, ET AL., AS THE BOARD OF EDUCATION OF
THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 13, 1910.

Nov. 1,
S. J.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2203.

No. 9, SPECIAL CALENDAR.

ISABEL I. WALL, BY HER NEXT FRIEND, STEPHEN R.
WALL, APPELLANT,

vs.

JAMES F. OYSTER, WILLIAM V. COX, BARTON W. EVER-
MANN, ELLEN SPENCER MUSSEY, MARY CHURCH
TERRELL, RICHARD R. HORNER, WILLIAM D. HOOVER,
WILLIAM V. TUNNELL, AND ELIZABETH HOEKE,
APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original.	Print
Caption	<i>a</i>	1
Petition for a writ of mandamus	1	1
Petitioner's Exhibit No. 1—Letter.....	6	4
Rule to show cause.....	7	4
Marshal's return.....	7	4
Amended petition.....	8	5
Answer of James F. Oyster.....	14	7
Answer of William V. Cox <i>et al.</i>	24	13
Demurrer to return.....	25	14
Order overruling demurrer.....	26	15
Replication	26	15
Joinder in issue.....	26	15

	Original.	Print
Supplemental answer of Jas. F. Oyster.....	27	15
Opinion of the court.....	28	16
Order denying writ of mandamus; dismissing rule and petition....	31	17
Judgment and appeal.....	32	18
Memorandum : Appeal bond approved and filed.....	32	18
Order making bill of exceptions part of record.....	32	18
Bill of exceptions.....	33	18
Letter, M. E. Little to Mrs. Wall.....	33	19
Letter, Mrs. Wall to Board of Education.....	33	19
Letter, John Ridout to Board of Education.....	35	20
Letter, H. O. Hine to John Ridout.....	37	20
Testimony of Lily A. Wall.....	37	21
Stephen R. Wall.....	39	22
Nellie Dawson.....	41	22
Mary E. Little.....	41	23
David H. Oertly.....	41	23
Francis Cross.....	42	23
Frank A. Speare.....	42	23
Daniel Slattery.....	42	23
J. C. Daley.....	43	23
J. F. Oyster.....	43	24
Opinion of the court.....	44	24
Directions to clerk for preparation of transcript of record.....	48	26
Clerk's certificate.....	49	26

In the Court of Appeals of the District of Columbia.

No. 2203.

ISABEL I. WALL, &c., Appellant,
vs.
JAMES F. OYSTER et al., &c.

a Supreme Court of the District of Columbia.

At Law. No. 52466.

ISABEL I. WALL, Infant, By STEPHEN R. WALL, Her Next Friend,
vs.
JAMES F. OYSTER, WILLIAM V. COX, BARTON W. EVERMANN, ELLEN
Spencer Mussey, Mary Church Terrell, Richard R. Horner, Wil-
liam D. Hoover, William V. Tunnell, Elizabeth Hoeke.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1 *Petition for a Writ of Mandamus.*

Filed Mar. 17, 1910.

In the Supreme Court of the District of Columbia.

At Law. No. 52466.

ISABEL I. WALL, Infant, By STEPHEN R. WALL, Her Next Friend,
vs.
JAMES F. OYSTER, WILLIAM V. COX, BARTON W. EVERMANN, ELLEN
Spencer Mussey, Mary Church Terrell, Richard R. Horner, Wil-
liam D. Hoover, William V. Tunnell, Elizabeth Hoeke.

The Petition of Isabel I. Wall an infant by Stephen R. Wall,
her father and next friend respectfully represents:

1. That she is an infant of the age of seven years, a citizen of the

United States, a resident of the District of Columbia and files this Petition by Stephen R. Wall her father and next friend.

2. The Respondents compose the Board of Education of the District of Columbia, they are all citizens of the United States, residents of the District of Columbia and are sued in their official capacity as such Board.

3. That petitioner resides with her parents at No. 1019 Kearney Street, Brookland in said District.

4. That she was admitted at the opening of the current school year as a pupil in the first grade of the Brookland school for white children this being her first attendance at a public school, and remained in attendance at said school without objection until on or about September 30th 1909 when the principal of said school notified Petitioner's mother that "certain rumors" made it impossible for Petitioner to longer attend said school, and on inquiry, Petitioner's said mother learned that it was claimed that Petitioner was a "colored child" within the meaning of the School law and not eligible to attend a white school.

5. When this ruling was made it was brought to the attention of the Superintendent of the Public Schools who approved it. Thereafter the matter was brought to the attention of the Respondents as such Board and respondents as such Board affirmed the action of said Brookland principal and of the Superintendent of Schools, a copy of the official notification of such action is herewith filed and made part hereof, as petitioner's Exhibit No. 1.

6. The nearest colored school which Petitioner could attend if she were a colored child, is located at a very much greater distance from her home than is the school building from which she has been illegally excluded, and attendance at such a school would impose very serious inconvenience upon her besides subjecting her to danger because of her extreme youth.

7. Petitioner is advised and avers that Section 17 of the Act of Congress approved June 25th 1864, Statutes 13, page 191 which is carried into section 279 of the Revised Statutes relating to the District of Columbia and into sections 10, 11 of Abert's Compiled Laws, Title "Public Schools" and which is the only Legislative authority for the exclusion of colored children from white schools, does not expressly prohibit the attendance of colored children at white schools, but only does so by inference in that it provides for maintenance of separate schools for white and colored children.

8. Petitioner is advised and avers that the said act of Congress in so far as it attempts to exclude colored children from attendance upon schools for white children is unconstitutional and void because it violates the 5th Amendment to the Constitution of the United States in that no opportunity is by the terms of said Act afforded for a hearing on the behalf of the excluded pupil before exclusion, on the question of such pupil's racial status, and so the said Act deprives the persons affected of due process of law in the inquiry into and the ascertainment of the vitally important question of their racial status.

9. Petitioner further avers that if said legislation were valid which she denies, she is not a "colored child" within the purview of said legislation because she says that her great grandparents were a white man and a very light mulatto woman; her grandparents were a son of said great grandparents and a white woman, and the parents of petitioner are a son of the said grandparents and a white woman.

4 10. Petitioner further says that she is a white child in personal appearance as is shown by her admittance without question to said Brookland school and she is so treated and recognized by her neighbors and friends.

11. That the questions of fact herein averred are not disputed in any particular by respondents and that the matter of controversy concerns legal questions exclusively.

12. That the said Board has erroneously adopted as its interpretation of said Act the view that the presence of any, the very slightest admixture of Negro blood in the veins of any child fixes the status of that child as "colored" for school purposes no matter what may be its personal appearance, or the character of its recognition and acceptance into society.

13. That in so deciding said Board does not exercise, but declines to exercise, any discretion and arbitrarily adopts one general and erroneous rule as aforesaid for all cases.

14. That said rule is erroneous as matter of law and that the true and correct test is the personal appearance of the child and the character of its reception into Society.

15. That Petitioner is seriously injured and has no remedy to correct said error of law expressed in said erroneous ruling of said Board except in this proceeding.

Petitioner therefore prays:

5 1. That the writ of Mandamus may issue to the respondents as the Board of Education of the District of Columbia requiring them to forthwith reverse the rulings of said Principal of the Brookland white school and of the Superintendent of Public Schools and to direct the immediate re-admittance of Petitioner to said Brookland school.

2. That such further order may be made herein as may be necessary.

To which end Petitioner prays that a Rule may issue requiring the Respondents as the said Board of Education to show cause if any they have why the Writ of Mandamus should not issue as prayed.

ISABEL I. WALL,
By STEPHEN R. WALL,
Her Next Friend.

JOHN RIDOUT,
Att'y for Petitioner.

I do solemnly swear that I have read the foregoing petition by me subscribed as the next friend of said Petitioner, that I know the contents thereof, that the facts therein stated upon my personal

knowledge are true and the facts stated upon information and belief I believe to be true.

STEPHEN R. WALL.

Subscribed and sworn to before me this 17th day of March 1910.

JOHN R. YOUNG, *Clerk*.

PETITIONER'S EXHIBIT No. 1.

Copy.

WASHINGTON, D. C., *Jan.* 31, 1910.

Mr. John Ridout.

SIR: I have the honor to advise you that the Board of Education at the meeting of January 28 duly considered your petition addressed to the Board under date of December 15, 1909, which was accompanied by papers signed by Mrs. Lillie A. Wall and Mr. Stephen R. Wall, as the basis of their appeal from the decision of the Superintendent of Schools in excluding their daughter Isabel from attendance in the Brookland public school. It is the judgment of the Board of Education that the action of the Superintendent of schools, taken October 13, 1909, in excluding the daughter of your client is a proper one. The decision of the Superintendent was therefore duly affirmed and your petition for an appeal therefrom was denied.

Very respectfully, yours,

HARRY O. HINE, *Secretary*.

Rule to Show Cause.

Issued March 17, 1910.

* * * * *

Upon consideration of the Petition in this Cause, it is this 17th day of March 1910 ordered that the Respondents herein as the Board of Education of the District of Columbia show cause on Friday March 25th 1910 at 10 o'clock A. M. before this Court why the Writ of Mandamus should not issue as prayed, if any such cause they have, provided that a copy of this order be served on James F. Oyster the President of said Board on or before March 18th 1910.

WRIGHT, *Justice*.

Marshal's Return.

Served copy of within rule to show cause on the Board of Education by service on James F. Oyster, president March 17 1910.

AULICK PALMER, *Marshal*.

8

Amended Petition.

Filed May 7, 1910.

* * * * *

The Petitioner Isabel I. Wall an infant by Stephen R. Wall her father and next friend respectfully represents; by this Amended Petition filed by leave of Court:

1. That she is an infant of the age of seven years, a citizen of the United States, a resident of the District of Columbia and files this Amended Petition by Stephen R. Wall her father and next friend.

2. That respondents above named compose the Board of Education of the District of Columbia; they are all citizens of the United States, residents of the District of Columbia and are sued in their official capacity as such Board.

3. The Petitioner resides with her Parents at No. 1019 Kearney Street Brookland, in said District.

4. That she was admitted at the opening of the current school year as a pupil in the first grade of the Brookland School for white children, this being her first attendance at a public school, and remained in attendance at said school without objection until on or about September 30th, 1909, when the Principal of said School notified Petitioner's mother that "certain rumors" made it im-
9 possible for Petitioner to longer attend said School, and, on inquiry, Petitioner's said mother learned that it was claimed that Petitioner was a colored child within the meaning of the school law and not eligible to attend a white school.

5. When this ruling was made it was brought to the attention of the Superintendent of the Public Schools who approved it. Thereafter the matter was brought to the attention of the Respondents as such Board and respondents as such Board affirmed the action of said Brookland principal and of the Superintendent of Schools. And Petitioner was thereupon excluded and still is excluded from attendance at said school.

6. The parents of Petitioner acting for and on her behalf have applied to said Brookland principal, to said Superintendent of schools, and finally, to said Respondents in their capacity as such Board of Education for the re-admittance of Petitioner to said school, but each and every such application has been denied and application was then made to said Respondents as the Board of Education as aforesaid, for a hearing in respect of Petitioner's right to re-admittance to said school, but respondents refused to allow such hearing. All said applications were made on Petitioner's behalf by her parents.

7. The nearest colored school which petitioner could attend if she were a colored child is located at a very much greater distance from her home than is the school Building from which she has been
and still is excluded illegally, and attendance at such school
10 would impose very serious inconvenience upon her, besides subjecting her to danger because of her extreme youth.

8. Petitioner avers that the only legislative authority for the ex-

clusion of colored children from white schools is to be found in Sections 281 to 285 293 and 294 of the Revised Statutes of the United States relating to the District of Columbia; that said sections do not expressly, but only by implication prohibit the attendance of colored children at white schools by providing for maintenance of separate schools for white and colored children.

9. Petitioner is advised and avers that the said legislation in so far as it attempts to exclude colored children from white schools is unconstitutional and void because it violates the 5th Amendment to the Constitution in that no opportunity is by the terms of the Act afforded for a hearing on behalf of the excluded pupil before exclusion, on the question of such pupil's racial status, nor does the said Act define what is meant by the term "colored child" and so the said Act deprives the persons affected of due process of law in the inquiry into and the ascertainment of the vitally important question of their racial status.

10. Petitioner further avers that if said legislation were valid which she denies, she is not a "colored child" within the purview of said legislation, because she says that her great grandparents were a white man and a light mulatto woman, her grandparents were a son of said great grandparents and a white woman, and the
11 parents of petitioner are a son of the said grandparents and a white woman.

11. Petitioner further says that she is a white child in personal appearance as is shown by her admittance without question to said Brookland school and she is so treated and recognized by her neighbors and friends.

12. Petitioner avers that, as she is informed, the questions of fact herein set forth are not disputed by respondents in any particular and that the matter of controversy concerns legal questions merely and exclusively.

13. That the said Board has erroneously adopted as its interpretation of said legislation the view that the presence of any the very slightest admixture of negro blood in the veins of a child fixes the status of that child as "colored" for school purposes no matter what may be its personal appearance or the character of its reception into society.

14. That in so deciding the said Board does not exercise, but declines to exercise any discretion and arbitrarily adopts one general and erroneous rule as aforesaid for all cases.

15. That Petitioner has never had a hearing in respect of her racial status or of her right to attend a school for white children but has been refused such a hearing by respondents in their aforesaid official capacity and she has been illegally excluded
12 from said Brookland school and is still so illegally excluded therefrom by the respondents in their said official capacity.

16. That the arbitrary rule adopted and applied in Petitioner's case by the respondents, without hearing, is erroneous as matter of law and that the true and correct test to be applied after seasonable hearing is the personal appearance of the child and the character of its reception into society.

17. That Petitioner is very seriously injured and has no remedy to correct said error of law expressed in said refusal of said respondents to hear or reinstate her in attendance at said Brookland school, except in this proceeding.

18. That respondents claim the right to exclude petitioner as aforesaid under the Act of Congress approved June 20 1906 34 Statutes page —

Petitioner therefore prays:

1. That the Writ of Mandamus may issue to the respondents as the Board of Education of the District of Columbia requiring them forthwith to reinstate petitioner in her attendance as a pupil in the said Brookland school for white children.

2. That such further order may be made herein as may be necessary.

13 To which end Petitioner prays that a Rule may issue requiring the respondents as the said Board of Education of the District of Columbia to show cause if any they have why the Writ of Mandamus should not issue as prayed.

ISABEL I. WALL,
By STEPHEN R. WALL,
Her Next Friend.

I Stephen R. Wall named as next friend in the foregoing petition do solemnly swear that I have read the said petition and know the contents thereof; that the facts therein stated upon my personal knowledge are true and that the facts therein stated upon information and belief I believe to be true.

STEPHEN R. WALL.

Subscribed and sworn to before me this 7th day of May 1910.

J. R. YOUNG, *Clerk*,
By H. BINGHAM,
Ass't Clerk.

14 *Answer of James F. Oyster.*

Filed May 13, 1910.

* * * * *

Answering said petition, this respondent says:

I.

That he can neither admit nor deny the allegations of paragraph one of said amended petition, but if the same shall be deemed by the Court to be material, insists upon strict proof thereof.

II.

This respondent admits the allegations of the second paragraph of said amended petition.

III.

This respondent can neither admit nor deny the allegations of paragraph three of said amended petition, but if the same shall be deemed by the Court to be material, insists upon strict proof thereof.

IV.

This respondent admits the allegations of the fourth paragraph of said amended petition, that the infant, Isabel I. Wall, was admitted at the opening of the current school year as a pupil in the first grade of the Brookland School for white children, this being her first attendance at a public school, and that she remained in attendance at said school without objection until on or about September 30, 1909; in answer to the allegation of said paragraph¹⁵ as to the notification given by the principal of said school to the mother of petitioner, this respondent says that the same was given in the form of a letter, written by said principal under date of September 27, 1909, addressed to petitioner's mother, under the name and designation of "Mrs. Whal"; said letter is in the words and figures following:

"Brookland School.

SEPT. 27, 1909.

"MY DEAR MRS. WHAL:

"In consequence of information subsequently obtained, I shall have to withdraw the ticket of admission to the Brookland School, issued September 17th inst. to your daughter Isabel Irene.

"Respectfully,

"M. E. LITTLE, *Principal.*"

Concerning the concluding allegations of said paragraph as to the inquiry of petitioner's mother and the result thereof, this respondent says that such allegations are so vague and indefinite that he can neither admit nor deny the same, but if they shall be deemed by the Court to be material, insists upon strict proof thereof.

V.

This respondent admits that the action of the principal of the Brookland School in withdrawing the ticket of admission of said infant to said school, as set forth in said notification of September 27, 1909 was approved by the Superintendent of Public Schools; and that subsequently an appeal was taken by the father and mother of said infant to the Board of Education, which said appeal is in the words and figures following, that is to say:

16

"BROOKLAND, D. C., *October 29, 1909.*

"To the Board of Education of the District of Columbia.

"GENTLEMEN: I am the mother of Isabel I. Whal, who is seven years of age and has been excluded from the Brookland school.

"Said child was admitted at the opening of the current school

year as a pupil in the first grade, in the Brookland school, and remained in attendance there without objection until about September 29, when the principal of said school sent me a note, stating in substance, that certain rumors made it impossible for said child to continue at school.

"Thereupon I made inquiry which developed that it was contended that said child is a 'colored child' within the meaning of the school legislation, and so not eligible to attend a white school.

"Upon appeal from this decision to the Superintendent of Schools, he replied in writing, in substance, that by advice of counsel, he sustained the action of the Principal of the Brookland School and of the Supervising Principal of the Fifth Division in excluding said child from the Brookland school.

"I understand that the final review of this action of the Superintendent rests with your Honorable Board subject of course to ultimate review by appropriate judicial proceedings. I am also advised that in order to lay the proper foundation for such proceedings it is necessary that on behalf of and as next friend of said child I should make this application to you.

"I therefore state that it can be conclusively established that the great grand parents on said child's father's side was a white man and a mulatto woman. The grandfather, the son of the above parents, married a white woman. That the parents of said child are a son of the marriage of the said grand parents, and myself a white woman.

"Under the circumstances I am advised and insist:

"(a) That any legislation excluding this child from any school because of its being a colored child is void as in contravention of the Fifteenth Amendment to the Constitution.

"(B) That even if such legislation be valid the said child is not a colored child within the true intent of said legislation.

"I therefore ask that you reverse the action of the Superintendent and direct the re-admittance of said child to said school.

"If you have not already in your probable conference with the Superintendent and your counsel, sustained the action taken, I also ask a hearing before the Honorable Board, at its earliest convenience, at which I may be represented by counsel.

17 I am, very respectfully,

MRS. LILLIE A. WALL.

"1019 Kearney St. N. E., Brookland, D. C.

"I, Stephen R. Wall, father of Isabel I. Wall (whose name appears on the school records as Isabel I. Whal) do hereby unite in the foregoing paper signed by Lillie A. Wall, and dated October 29th, 1909.

"STEPHEN E. WALL.

"January 11, 1910."

Before the Board of Education had taken official action upon said appeal, said Board received a letter dated December 15, 1909, and addressed to it by John Ridout, Esquire, as attorney for Mrs.

Wall, requesting immediate official action of the said Board upon the aforesaid appeal; said letter is in the words and figures following, that is to say:

“WASHINGTON, D. C., *Dec. 15th*, 1909.

“The Hon. Board of Education of the District of Columbia.

“GENTLEMEN: Some time ago Mrs. Wall the mother of Isabel I. Wall addressed to you a letter in which she stated facts in substance tending to show that the expulsion of the child, on the ground that she is colored, from the white school at Brookland, D. C., under an order of Supt. Stewart was not justified by the facts and she asked official action by the Board.

“She has had no reply and has learned from the verbal statement of your President that no formal official action will be taken.

“I assume that the Board does not wish to take the decisions of the Superintendent as its official decisions, if I am wrong in this assumption, your learned legal adviser will promptly correct your impression.

“As a matter of law, of course, Mrs. Wall is entitled to the official action of the Board expressed and recorded at a Board meeting.

“The matter is vital to the child and its parents. I cannot believe that the Board desires to impose upon Mrs. Wall the unnecessary expense of two Mandamus proceedings: one to compel action, and the second to review the action taken. In the first proceeding, at least, the costs would, in the end, be taxed against the individuals composing the Board. I must accordingly request immediate official action in the matter. If no such action is taken at the next regular meeting of the Board in January 1910 I shall be forced to assume that you refuse to act and shall then proceed accordingly.

“Yours respectfully,

“JOHN RIDOUT,
“Att’y for Mrs. Wall.”

The Board of Education thereafter at the meeting of the said Board held on January 28, 1910, duly considered the said appeal and the said letter from the said Ridout; respondent avers that the fair and reasonable meaning and intent to be gathered from the said letter was that petitioner and her parents had abandoned the request for a hearing, before the Board of Education, and instead sought only the immediate official action of the said Board as preliminary to the institution of proceedings in court; respondent further says that the Board of Education so understood and interpreted said letter and accordingly made no provision or arrangements for granting an oral hearing upon said appeal, but, assuming the allegations as to the parentage of said child as contained in the aforesaid written appeal of her parents to be true, took official action thereupon, and affirmed the aforesaid action of the Superintendent of Schools, the said action being communicated to the said Ridout in the words and figures following, that is to say:

- 19 "James F. Oyster, President; William V. Cox, Vice-President; Barton W. Evermann, Ellen Spencer Mussey, Mary Church Terrell, Justina R. Hill, Richard R. Horner, William D. Hoover, William V. Tunnell; Harry O. Hine, Secretary; A. T. Stuart, Superintendent of Public Schools.

Board of Education of the District of Columbia.
Franklin School Building.

"WASHINGTON, D. C., *January 31, 1910.*

"John Ridout, Esq., Fendall Building, Washington, D. C.

"SIR: I have the honor to advise you that the Board of Education at the meeting of January 28, duly considered your petition addressed to the Board under date of December 15, 1909, which was accompanied by papers signed by Mrs. Lillie A. Wall and Mr. Stephen R. Wall as the basis of their appeal from the decision of the Superintendent of Schools in excluding their daughter Isabel from attendance in the Brookland public school.

"It is the judgment of the Board of Education that the action of the Superintendent of Schools, taken on October 13, 1909, in excluding the daughter of your client, is a proper one. The decision of the Superintendent was therefore duly affirmed and your petition for an appeal therefrom was denied.

"Very respectfully yours,

"HARRY O. HINE,
Secretary."

T-H.

This respondent admits that petitioner has since been excluded from attendance at the said Brookland School, but says that educational opportunities, advantages and facilities equal in every respect to those at the said Brookland School are available to petitioner in other schools in the District of Columbia, and would have
20 been afforded her at any time during the present school year upon her making proper application therefor.

VI.

This respondent admits that the parents of the petitioner, acting for and on her behalf, applied to the said Brookland Principal, to said Superintendent of Schools, and to the respondents in their capacity as the Board of Education, for the re-admittance of petitioner to the Brookland School; for further answer to the allegations of paragraph six of the said amended petition, this respondent refers to his answer to paragraph five thereof, but he denies, as hereinbefore stated, that the said Board refused to allow petitioner a hearing in respect of her alleged right to readmittance to the said Brookland School.

VII.

This respondent is advised that the allegations of paragraph seven of the said amended petition are immaterial in law, and that he is

not required to make answer thereto, but if the Court shall deem the same to be material, insists upon strict proof thereof.

VIII and IX.

Answering paragraphs eight and nine of said amended petition, this respondent is advised that the allegations thereof relate solely to matters and questions of law, and that no answer thereto is necessary.

21

X.

Answering paragraph ten of said amended petition, this respondent says that by the allegations of said paragraph and also by the statements contained in the appeal of the father and mother of said infant to the Board of Education, hereinbefore referred to, said infant is admitted to be descended from a colored ancestor, and to have a distinct and material admixture of colored blood. This respondent is informed and believes that the said Stephen R. Wall, father of said infant, is a colored man in appearance, and is so recognized by his neighbors and friends.

In the matter of the classification of the school children of the District of Columbia as white or colored, and in the assignment of them when so classified to the proper schools, as well as in other matters, the Board of Education is by law vested with broad discretionary powers; and in its official action concerning said infant, as hereinbefore set forth, acted fairly and reasonably within the limits of such powers.

XI.

This respondent can neither admit nor deny the allegations of paragraph eleven of said amended petition, as to the personal appearance of said infant; but he says that the said infant upon her own statement is of such tender age that she could not by herself acquire a residence and acquaintanceship apart from the neighbors and friends of her father, and that she is to be treated in all respects as the child of her father, Stephen R. Wall.

22

XII.

This respondent is advised that his answers to the other paragraphs of said amended petition constitute a sufficient answer to the allegations of paragraph twelve, and that he is not required to make further or more specific answer thereto.

XIII and XIV.

For answer to paragraphs thirteen and fourteen of said amended petition, this respondent refers to his answer to paragraph ten thereof.

XV.

Answering paragraph fifteen of the said amended petition, this respondent says that petitioner has never had an oral hearing before the Board of Education in respect to her racial status, or of her right to attend a school for white children, but that the aforesaid

written appeal of her parents was duly considered by the said Board, as aforesaid; and as is more fully set forth in the foregoing answers to paragraphs five and six of the petition, this respondent denies that the petitioner has been refused a hearing by respondents in their aforesaid official capacity, or that the petitioner has been or is now illegally excluded by them from said Brookland School.

XVI, XVII, and XVIII.

This respondent is advised that paragraphs sixteen, seventeen and eighteen of the said amended petition relate solely to matters
23 and questions of law, and that he is not required to make answer thereto.

And having thus fully answered, this respondent prays to be hence dismissed with his reasonable costs.

JAS. F. OYSTER.

STANTON C. PEELLE,
Attorney for Respondents as Board of Education.

DISTRICT OF COLUMBIA, ss:

I, James F. Oyster, being first duly sworn according to law, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and facts therein stated of my own knowledge are true and those stated on information and belief I believe to be true.

JAS. F. OYSTER.

Subscribed and sworn to before me this 12th day of May, A. D. 1910.

[SEAL.]

JOHN W. F. SMITH,
Notary Public, D. C.

24 *Answer of William V. Cox et al.*

Filed May 13, 1910.

* * * * *

Your respondents and each of them have read over the answer of James F. Oyster, President of the Board of Education, and know the contents thereof; they desire formally to join therein and adopt said answer as their own.

WILLIAM V. COX.
BARTON W. EVERMANN.
ELLEN SPENCER MUSSEY.
RICHARD R. HORNER.
WM. D. HOOVER.
ELIZABETH HOEKE.
WILLIAM V. TUNNELL.

STANTON C. PEELLE,
Att'y for Board of Education.

DISTRICT OF COLUMBIA, ss:

We, William V. Cox, Barton W. Evermann, Ellen Spencer Mussey, Richard R. Horner, William D. Hoover, William V. Tunnell, and Elizabeth Hoeke, being first duly sworn, on oath do subscribe and say that we are the members of the Board of Education, and have each of us read the foregoing answer by us subscribed and know the contents thereof; that the matters therein stated of our own knowledge are true and those stated on information and belief we believe to be true.

WILLIAM V. COX.
BARTON W. EVERMANN.
ELLEN SPENCER MUSSEY.
RICHARD R. HORNER.
WM. D. HOOVER.
ELIZABETH HOEKE.
WILLIAM V. TUNNELL.

25 Subscribed and sworn to before me this 12th day of May,
 A. D. 1910.
[SEAL.]

JOHN W. F. SMITH,
Notary Public, D. C.

Demurrer to Return.

Filed May 13, 1910.

* * * * * *

The Petitioner says the Respondents' answer is bad in substance.

JOHN RIDOUT,
Attorney for Petitioner.

NOTE.—One of the matters of law to be argued on this demurrer is: That the respondents are without legal authority to exclude the Petitioner from the Brookland school, because the Legislation under which they profess to act is unconstitutional and void in that no opportunity for a hearing is given before the order of exclusion is made.

Supreme Court of the District of Columbia.

FRIDAY, May 13, 1910.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * * *

26 This cause coming on to be heard upon the petitioner's demurrer to the answer of respondents to the amended petition filed herein, it is considered that said demurrer be and it is hereby overruled, with leave to the petitioner to reply, and the cause is set down for hearing on the facts on May 20, 1910.

Replication.

Filed May 16, 1910.

* * * * *

The Petitioner for Replication to the answer of the respondent says:

She denies that she has a distinct and material admixture of colored blood.

She denies that Stephen R. Wall her father is a colored man in appearance or that he is so recognized by his neighbors and friends.

She denies that said respondents acted either fairly or reasonably in the premises or within any powers possessed by them and says they did in express terms and in writing refuse her a hearing on the question of her racial status.

JOHN RIDOUT,
Attorney for Petitioner.

Joinder in Issue.

Filed May 20, 1910.

* * * * *

Come now the respondents, and join issue upon the traverse of the relator, filed herein.

STANTON C. PEELLE,
Attorney for Respondents.

27 *Supplemental Answer of Jas. F. Oyster.*

Filed May 27, 1910.

* * * * *

For further and supplemental answer in the above-entitled cause, this respondent says that, pursuant to the direction of the Court, all the respondents herein met, as the Board of Education of the District of Columbia, on the twenty-sixth day of May, 1910, and after hearing evidence and argument of counsel on behalf of the petitioner herein, took the following official action, in the resolution presented by James F. Oyster and seconded by Ellen Spencer Mussey, which was duly carried:

"The Board of Education of the District of Columbia having heard the evidence adduced and the argument of counsel in behalf of Isabel I. Wall, upon her appeal from the action of the principal of the Brookland School for white children and of the Superintendent of Schools, in excluding her from attendance at said school upon the ground of her being a colored child, is of the opinion,

and therefore finds, that said Isabel I. Wall, for the purposes of school classification, is a colored child, and she is therefore so classified for school attendance; and the action of the said principal and superintendent, as aforesaid, is therefore affirmed."

JAS. F. OYSTER.

STANTON C. PEELLE,
Att'y for Board of Education.

28 DISTRICT OF COLUMBIA, ss:

James F. Oyster, on oath, says that he had read the foregoing supplemental answer by him subscribed and knows the contents thereof; that the facts therein stated upon his personal knowledge are true and those stated upon information and belief, he believes to be true.

JAS. F. OYSTER.

Subscribed and sworn to before me this twenty-seventh day of May, A. D., 1910.

[SEAL.] RAYMOND O. WILMARTH,
Notary Public, D. C.

Opinion of the Court.

Filed June 7, 1910.

* * * * *

Application for Mandamus to the Board of Education to Enroll Isabel I. Wall in a White School.

There was to be observed of the child no physical characteristic which afforded ocular evidence suggestive of aught but the Caucasian. Her father, while of light complexion, presents to the eye racial characteristics which identify him of Negro blood, her mother formerly wife to a Mongolian is taken to be white.

The child's proportion of Negro blood is $\frac{1}{8}$ or $\frac{1}{16}$; the latter conceded, the former claimed with support in the evidence. In the judgment of the court the difference can exert no effect in the outcome of this proceeding.

29 Although providing for separate white and "colored" schools Congress has by no enactment undertaken to define what race or what percentage or proportion of racial blood shall characterize an individual as "colored": therefore the term being without legislative definition is left to the import ascribed to it in the common parlance of the people. There is then to be examined whether in the week-day speech of the people the word "colored," bears a significance which should be considered to include this child.

That the common use of the word throughout the United States is in no wise significant of mere complexion is quite definitely established by considering the universal habit of the people in their unalterable failure to apply it to the Indian who is red, the Mon-

golian who is yellow, or to the Malay who is brown; its application to one of these unfair complexions is not any time to be heard; to those of Negro blood alone is it ever found to be suited; and then, not depending for the propriety of its application upon a shade of particular blackness but rather upon an admixture of a particular racial blood, the Negro. Whether complexions appear distinctly black or approaching toward the fair by gradations of shading is all one; if there be physical touches whether of shade, hair or physiognomy telling of Negro blood, such a one is held by the people to be "colored" despite his color or want of color. In confirmation of the accuracy of this conception, one need appeal to no mentor beyond the honesty of his own observations day by day.

While there is therefore no good argument nor any other kind of a good consideration which opposes the conclusion that no matter what the complexion, admixture of Negro blood makes
30 one "colored" if it manifests itself in racial traits which identify its presence to the eye of the observer, there remains to be considered whether, if negro blood be present, mere fairness alone of even great degree must of necessity enact the subject "white." That gradations in shading toward black, or gradations in shading toward fairness are of very insignificant concern in determining whether one be "colored" has already been observed. The sense of sight is but one avenue for the conveyance of information upon the subject of racial identity to the mind of the investigator. Actual color seems to the public mind to be important only as one of the several evidences which if sufficiently pronounced serve to identify the subject as of the negro race; and this consideration, that is to say the consideration of racial status, seems to my mind to measure an ultimate conception to which the mind of the people has arrived. It is this—putting away for the moment particular instances which might present more refined complications,—persons of whatever complexion, who bear negro blood in whatever degree and who abide in the racial status of the Negro, are "colored" in the common estimation of the people.

The child at bar has acquired no racial status personal to itself; its status of necessity is that of its father; his, and that of his paternal ancestors has, as is conceded, been always that of the negro; he himself has thus been commonly known and identified; his business to the extent proven, proprietor of a negro pool room, conforming.

31 If it were to be, although not yet suggested, that the child was of an independent status self-acquired, the effort could not succeed; for the evidence shows the beginning of her attendance at White Sunday School to have occasioned an exodus which demanded her withdrawal, while the undertaking to establish her enrollment in the white public school has up to now been fruitful of only the adversary effort now here at the bar.

It is to be concluded that the child is of negro blood of $\frac{1}{8}$ to $\frac{1}{16}$; that her racial status is that of the negro. She is therefore "colored" according to the common meaning of the term, and the application for the writ of Mandamus must be denied.

Supreme Court of the District of Columbia.

TUESDAY, *June 7, 1910.*

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

This cause coming on to be heard upon the petition for a writ of mandamus, the answer of respondents, rule to show cause, and all proceedings herein, and having been argued by counsel and submitted to the court, and it appearing to the Court that said Isabel I. Wall is a colored child, it is, this 7th day of June, A. D. 1907, considered that the prayer of petitioner, be, and it is hereby denied, that the rule to show cause be, and the same is hereby discharged, the petition dismissed, and that the Respondents recover against the

Petitioner's next friend Stephen R. Wall, the costs of
32 their defense to be taxed by the Clerk, and have execution thereof.

From the foregoing the Petitioner by her Attorney in open Court notes an appeal to the Court of Appeals of the District of Columbia, and upon motion the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars (\$100.)

Memorandum.

June 28, 1910.—Appeal bond approved & filed.

Supreme Court of the District of Columbia.

SATURDAY, *July 9, 1910.*

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * *

Now comes here the petitioner by her Attorney and prays the Court to sign, seal and make part of the record, her bill of exceptions taken during the trial of this cause (heretofore submitted) now for then, which is accordingly done.

33

Bill of Exceptions.

Filed July 9, 1910.

* * * * *

Be it remembered that this cause came on for hearing before Mr. Justice Wright, whereupon the petitioner gave evidence as herein-after set forth:

She first offered in evidence the following correspondence:

"BROOKLAND SCHOOL, *Sept. 27, 1909.*

MY DEAR MRS. WHAL: In consequence of information subsequently obtained I shall have to withdraw the ticket of admission to the Brookland School issued September 17th instant to your daughter Isabel Irene.

Respectfully,

M. E. LITTLE,
Principal.

BROOKLAND, D. C., *October 29, 1909.*

To the Board of Education of the District of Columbia.

GENTLEMEN: I am the mother of Isabel I. Whal, who is seven years of age and has been excluded from the Brookland school.

Said child was admitted at the opening of the current school 34 year as a pupil in the first grade, in the Brookland school, and remained in attendance there without objection until about September 29, when the principal of said school sent me a note, stating in substance, that certain rumors made it impossible for said child to continue at school.

Thereupon I made inquiry which developed that it was contended that said child is a "colored child" within the meaning of the school legislation, and so not eligible to attend a white school.

Upon appeal from this decision to the Superintendent of Schools, he replied in writing, in substance, that by advise of counsel, he sustained the action of the Principal of the Brookland School and of the Supervising Principal of the Fifth Division in excluding said child from the Brookland school.

I understand that the final review of this action of the Superintendent rests with your Honorable Board subject of course to ultimate review by appropriate judicial proceedings. I am also advised that in order to lay the proper foundation for such proceedings it is necessary that on behalf of and as next friend of said child I should make this application to you.

I therefore state that it can be conclusively established that the great grand parents on said child's father's side was a white man and a mulatto woman. The grandfather, the son of the above parents, married a white woman. That the parents of said child are a son of the marriage of the said grand parents, and myself a white woman.

Under the circumstances I am advised and insist:

35 (a) That any legislation excluding this child from any school because of its being a colored child is void as in contravention of the Fifteenth Amendment to the Constitution.

(B) That even if such legislation be valid the said child is not a colored child within the true intent of said legislation.

I therefore ask that you reverse the action of the Superintendent and direct the re-admittance of said child to said school.

If you have not already in your probable conference with the Superintendent and your counsel, sustained the action taken, I also

ask a hearing before the Honorable Board, at its earliest convenience, at which I may be represented by counsel.

I am, very respectfully,

MRS. LILLIE A. WALL.

#1019 Kearney St., N. E., Brookland, D. C.

I Stephen R. Wall, father of Isabel I. Wall (whose name appears on the school records as Isabel I. Whal) do hereby unite in the foregoing papepr signed by Lillie A. Wall, and dated October 29th, 1909.

STEPHEN R. WALL.

January 11, 1910.

WASHINGTON, D. C., *Dec. 15th*, 1909.

The Hon. Board of Education of the District of Columbia.

36 GENTLEMEN: Some time ago Mrs. Wall the mother of Isabel I. Wall addressed to you a letter in which she stated facts in substance tending to show that the expulsion of the child, on the ground that she is colored, from the white school at Brookland D. C., under an order of Supt. Stewart was not justified by the facts and she asked official action by the Board.

She has had no reply and has learned from the verbal statement of your President that no formal official action will be taken.

I assume that the Board does not wish to take the decisions of the Superintendent as its official decisions, if I am wrong in this assumption, your learned legal adviser will promptly correct *your* impression.

As a matter of law, of course, Mrs. Wall is entitled to the official action of the Board expressed and recorded at a Board meeting.

The matter is vital to the child and its parents. I cannot believe that the Board desires to impose upon Mrs. Wall the unnecessary expense of two Mandamus proceedings: one to compel action, and a second to review the action taken. In the first proceeding, at least, the costs would, in the end, be taxed against the individuals composing the Board. I must accordingly request immediate official action in the matter. If no such action is taken at the next regular meeting of the Board in January 1910 I shall be forced to assume that you refuse to act and shall then proceed accordingly.

Yours respectfully,

JOHN RIDOUT,
Att'y for Mrs. Wall.

37

"JANUARY 31, 1910.

John Ridout, Esq., Fendall Building, Washington, D. C.

SIR: I have the honor to advise you that the Board of Education at the meeting of January 28, duly considered your petition addressed to the Board under date of December 15, 1909, which was accompanied by papers signed by Mrs. Lillie A. Wall and Mr. Stephen R. Wall as the basis of their appeal from the decision of

the Superintendent of Schools in excluding their daughter Isabel from attendance in the Brookland public school.

It is the judgment of the Board of Education that the action of the Superintendent of Schools, taken on October 13, 1909, in excluding the daughter of your client, is a proper one. The decision of the Superintendent was therefor- duly affirmed and your petition for an appeal therefrom was denied.

Very respectfully yours,

HARRY O. HINE, *Secretary.*"

T-H.

Thereupon the testimony of witnesses was offered as follows on behalf of petitioner:

LILY A. WALL testified as follows on direct examination:

That she is the wife of Stephen R. Wall and the mother of the petitioner, who was born December 12, 1901, at Washington, D.
38 C.; that witness married said Stephen in Philadelphia, Pennsylvania, May 28, 1900; that Isabel was baptized at Christ Church, Navy Yard, by Rev. A. S. Johns, Rector of said Church, which is a white Episcopal Church, September 2, 1906; she was then attending the Sunday School at Bethany Baptist Church in Washington, a white church. Isabel was then between six and seven years old.

Isabel was first admitted to public school at the Brookland white school in September, 1909. She remained there about ten days, when the letter above set forth from Miss Little was received. No objection was made at any of these schools to Isabel's admission. She was invited to attend all the Sunday-Schools.

Witness' mother was Scotch-Irish, and her father English; both white.

The child Isabel was at this point offered in evidence.

Witness resuming testified that after the child had attended the Brookland Baptist white Sunday-school for about a month, two gentlemen from that church called on witness and requested that witness and said children either identify themselves as white or discontinue their attendance upon the Church and school.

Witness and her daughter then began attendance at the First Congregational white Church in the City of Washington, of which she had been a member for fifteen years.

Witness knows nothing of her personal knowledge of her husband's ancestry, except that she knew his mother, who was a white woman. The white public school at Brookland is about two
39 blocks from witness' home.

On cross-examination, the witness testified that the gentlemen who called on behalf of the Sunday-school at Brookland requested that she and her children remain away or establish their identity as white. Witness and her family were introduced to the Brookland Church by the Pastor of the Bethany Baptist Church.

Witness had been married to a Japanese. She further testified in response to questions by the Court that her home at the time of her

marriage to said Wall was in Washington, D. C., that they were on a trip to Atlantic City, when they stopped to change cars at Atlantic City, he suggested they get married; that there is no African blood in her ancestry; that the mark of color just below her jaw is a birth mark or from the liver.

STEPHEN R. WALL, on direct examination testified that he was the father of Isabel R. Wall; that the reputation in his family was that his great grandmother was a mulatto woman; that he did not know the race of his great grandfather; that witness' grandfather was a white man and witness' grandmother was the issue of the marriage of his great-grandparents; that witness' father was the issue of the marriage of his grandparents, and that his mother was white.

The question as to Isabel's race was first raised when she was requested not to attend the Brookland Sunday School.

40 On cross-examination witness testified that his parents resided north of the city of Washington, in a part of the suburbs known as "The Camp", where witness grew up and where most of the residents were colored. Witness' father was known as a colored man; witness' mother was, and was recognized as, a white woman.

The father's associations were mainly with colored people; his mother's were to some extent, but not entirely the same. Witness' knowledge of his mother's race was derived from her statements to him; he never saw her father or mother.

Asked whether, up to the time of his marriage to Mrs. Wall, his associations were not largely with the colored race, witness testified that he did not think he had ever made it his custom to associate with either class exclusively, but had always gone with those that were congenial, and he thought that for the last twenty-five years he had gone exclusively with whites. At present he has very little association with either white or colored; the reason is that he was a good fellow up to the time he got married, and since then he has attended to his duties as a married man and has confined himself to his home, for which reason very few people know anything about him from the time he was married up to date. In 1887 witness conducted a pool-room patronized by both white and colored persons, but largely by colored persons, and the locality of the pool-room was almost if not entirely, occupied by colored persons and was known
41 as a colored settlement. About twelve years ago witness kept a bicycle repair shop.

Witness' father was buried at Arlington National Cemetery, does not know whether in a part set apart for colored people or not.

NELLIE DAWSON testified on direct examination that she was a teacher in the Bethany Sunday-school, white, and that Isabel Wall was a pupil there when she was her teacher and the child attended one summer.

On cross-examination witness testified she had seen the child's mother, brother and sisters, but not the father.

Thereupon petitioner rested.

Thereupon the respondents called the witnesses hereinafter named, who respectively testified as hereinafter stated:

MARY E. LITTLE on direct examination testified that she was the principal of the Brookland White Public School, and that Mrs. Wall applied to her for Isabel's admission to the school; the usual inquiries were made, and Mrs. Wall, when questioned by witness about the spelling of the name, gave it as "W-h-a-l".

On cross-examination, witness testified that she then saw the child and admitted her without objection.

DAVID H. OERTLY, on direct examination, testified that he was an officer of the Brookland Baptist Sunday-school and was one of the Committee of two which on behalf of the school, and after
42 a number of children had been withdrawn because of the Wall child's attendance, called on Mrs. Wall and requested withdrawal of the child.

FRANCIS CROSS, on direct examination, testified that he was a Police Inspector; that he knew the said Stephen R. Wall by sight, that he knew Wall's father, did not know his mother; in the precinct in which he did duty, the father was regarded as a colored man. The locality in which the father of said Stephen R. Wall resided was known as "The Camp"; it was generally occupied by colored people.

FRANK A. SPEARE, on direct examination, testified that he was an undertaker, had been in the business for twenty-five years, and had charge of the funeral of the late Amanda A. Wall, the mother of Stephen R. Wall; that at first and until after he had seen the physician's certificate he had supposed the deceased to be colored. Witness' experience in handling different bodies of different nationalities is that there is an odor from the body itself; when he handles a colored body, it has an odor which to him is very offensive, and he perceived that odor on this body; the odor was perfectly plain, just the same as he has perceived it on other bodies; that deceased was buried in Arlington Cemetery beside her husband, in the part set aside for colored officers of the volunteer army.

DANIEL SLATTERY, on direct examination, testified that he is a Lieutenant of Police; that he was quite intimately acquainted with the father of Stephen R. Wall, and also with a brother of
43 said father, and knew the mother and sister of Stephen R. Wall; always considered them to be colored; the mother was yellow in appearance, and she and her husband had the reputation in the community of being colored.

JOHN C. DALEY, on direct examination, testified that he was a Police officer, that he had known Stephen R. Wall for twenty-five years, knew his father for about twenty-two years; said Stephen

conducted about twenty-two years ago a pool-room at corner of 11th and Q Streets, in Washington; it was a colored pool-room, and a colored neighborhood. The reputation of the Wall family was that it was colored.

JAMES F. OYSTER, on direct examination, testified that he was President of the Board of Education of the District of Columbia; that all the correspondence given in evidence was considered by the Board in passing upon the question of the exclusion of Isabel I. Wall from the Brookland School.

In response to questions by the Court, he testified that the Board acted on the report of the Superintendent of Schools and did not definitely decide whether the child was white or colored, preferring to have that question settled by the Court.

Thereupon the Court said:

It is the judgment of the Court that that question will have to be settled by the School Board before the Court can pass on it.
44 If you desire to take an adjournment until the School Board can be given an opportunity to determine whether they will consider and determine that question you may take it, otherwise the writ of mandamus will issue against them requiring them to decide it."

The further hearing of the case was then postponed until Friday, May 27th, 1910.

On that day consideration of the case being resumed, the supplemental return set forth in the record was read, and the case submitted on the pleadings and the testimony as set forth in this bill of exceptions.

Thereafter the Court filed the following finding and opinion:

"There was to be observed of the child no physical characteristic which afforded ocular evidence suggestive of aught but the Caucasian. Her father, while of light complexion, presents to the eye racial characteristics which identify him of Negro blood, her mother formerly wife to a Mongolian is taken to be white.

The child's proportion of Negro blood is $\frac{1}{8}$ or $\frac{1}{16}$; the latter conceded, the former claimed with support in the evidence. In the judgment of the court the difference can exert no effect in the outcome of this proceeding.

Although providing for separate white and 'colored' schools Congress has by no enactment undertaken to define what race or what percentage or proportion of racial blood shall characterize an individual as "colored"; therefore the terms being without legislative
45 definition is left to the import ascribed to it in the common parlance of the people. There is then to be examined whether in the week-day speech of the people the word "colored" bears a significance which should be considered to include this child.

That the common use of the word throughout the United States is in no wise significant of mere complexion is quite definitely established by considering the universal habit of the people in their unalterable failure to apply it to the Indian who is red, the Mongo-

lian who is yellow, or to the Maylay who is brown; its application to one of these un-fair complexions is not at any time to be heard; to those of Negro blood alone is it ever found to be suited; and then, not depending for the propriety of its application upon a shade of particular blackness but rather upon an admixture of a particular racial blood, the Negro. Whether complexions appear distinctly black or approaching toward the fair by gradations of shading is all one; if there be physical touches whether of shade, hair or physiog-omy telling of Negro blood, such a one is held by the people to be "colored" despite his color or want of color. In confirmation of the accurancy of this conception, one need appeal to no mentor beyond the honesty of his own observations day by day.

While there is therefore no good argument nor any other kind of a good consideration which opposes the conclusion that no matter what the complexion, admixture of Negro blood makes one "colored" if it manifests itself in racial traits which identify its presence

46 to the eye of the observer, there remains to be considered whether, if negro blood be present, mere fairness alone of even great degree must of necessity enact the subject "white."

That gradations in shading toward black, or gradations in shading toward fairness are of very insignificant concern in determining whether one be "colored" has already been observed. The sense of sight is but one avenue for the conveyance of information upon the subject of racial identity to the mind of the investigator. Actual color seems to the public mind to be important only as one of the several evidences which if sufficiently pronounced serve to identify the subject as of the negro race; and this consideration, that is to say the consideration of racial status, seems to my mind to measure an ultimate conception to which the mind of the people has arrived. It is this—putting away for the moment particular instances which might present more refined complications,—persons of whatever complexion, who bear negro blood in whatever degree and who abide in the racial status of the Negro, are "colored" in the common estimation of the people.

The child at bar has acquired no racial status personal to itself; its status of necessity is that of its father; his, and that of his paternal ancestors has, as is conceded, been always that of the negro; he himself has thus been commonly known and identified; his business to the extent proven, proprietor of a negro pool-room, conforming.

47 If it were to be, although not yet suggested, that the child was of an independent status self-acquired the effort could not success; for the evidence shows the beginning of her attendance at White Sunday School to have occasioned an exodus which demanded her withdrawal while the undertaking to establish her enrollment in the white public school has up to now been fruitful of only the adversary effort now here at the bar.

It is to be concluded that the child is of negro blood of $\frac{1}{8}$ to $\frac{1}{16}$: that her racial status is that of the negro. She is therefore "colored" according to the common meaning of the term, and the application for the writ of Mandamus must be denied."

To which finding and decision the petitioner by her counsel excepted, and said exception was duly noted by the Court upon his minutes.

And the counsel for petitioner now prays the Court to sign this bill of exceptions which contains the substance of all the testimony in the case in order that the same may be made matter of record in this case.

Which is accordingly done now for then this 9th day of July, A. D. 1910.

DAN THEW WRIGHT, *Justice.*

48 *Directions to Clerk for Preparation of Transcript of Record.*

Filed July 18, 1910.

* * * * *

The Clerk will please prepare the record for the Court of Appeals in the above-entitled cause, and include therein the following:

Petition for writ of mandamus, filed March 17, 1910.

Rule to show cause issued March 17, 1910, and return thereon.

Amended petition, filed May 7, 1910.

Answers (2) thereto, filed May 14, 1910.

Demurrer to answers, filed May 13, 1910.

Order overruling demurrer, May 13, 1910.

Replication, filed May 16, 1910.

Joinder in issue, filed May 20, 1910.

Supplemental answer of respondent Oyster, filed May 27, 1910.

Decree dismissing petition, discharging rule, etc., appeal noted, and order fixing bond, June 7, 1910.

Bill of Exceptions.

Order approving appeal bond.

Appeal bond filed.

This designation.

JOHN RIDOUT,
Attorney for Petitioner.

I consent to the foregoing.

STANTON C. PEELLE,
Attorney for Board of Education.

49 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 48, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript in cause No. 52466 at Law, wherein Isabel I. Wall, Infant, by her next friend Stephen R. Wall is Plaintiff and

James F. Oyster, et als. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of August, 1910.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF G. BUHRMAN,
Ass't Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2203. Isabel I. Wall, &c., Appellant, vs. James F. Oyster et al., &c. Court of Appeals, District of Columbia. Filed Aug. 13, 1910. Henry W. Hodges, Clerk.